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Counsel for Pocatello Dental Group, P.C.

**UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO**

POCATELLO DENTAL GROUP, P.C.,)
an Idaho professional corporation,)
)
Plaintiff,)

vs.)

INTERDENT SERVICE CORPORATION,)
a Washington corporation,)
)
Defendant.)

Case No. CV 03-450-E-LMB

INTERDENT SERVICE CORPORATION,)
a Washington corporation,)
)
Counterclaimant,)

**SUPPLEMENTAL
AFFIDAVIT OF RON KERL
OPPOSING ISC'S RULE 67
MOTION**

vs.)

POCATELLO DENTAL GROUP, P.C., an)
Idaho professional corporation; DWIGHT G.)
ROMRIELL, individually; LARRY R.)
MISNER, JR., individually; PORTER)
SUTTON, individually; ERNEST SUTTON,)
individually; GREGORY ROMRIELL,)
individually; ERROL ORMOND, individually;)
and ARNOLD GOODLIFFE, individually;)
)
Counterdefendants.)

FILED
JUL 28 PM 2:37
11
CLERK OF DISTRICT COURT
POCATELLO, IDAHO

204

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on the 28 day of October, 2004, I served a true and

correct copy of the foregoing document as follows:

Erik F. Stidham
G. Rey Reinhardt
STOEL RIVES LLP
101 S. Capitol Blvd., Ste.1900
Boise, ID 83702-5958

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile

Scott J. Kaplan
STOEL RIVES LLP
900 SW Fifth Ave. Ste. 2600
Portland, OR 97204-1268

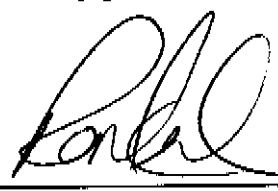
☒ U.S. Mail, postage prepaid
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☐ Facsimile

Lowell N. Hawkes
1322 East Center
Pocatello, ID 83201

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile

Richard A. Hearn
RACINE, OLSON, NYE, BUDGE
& BAILEY, CHTD.
P.O. Box 1391
Pocatello, ID 83204

☒ U.S. Mail, postage prepaid
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By: 
Ron Kerl



1101 SE TECH CENTER DRIVE • SUITE 195
PO BOX 872710 • VANCOUVER, WA 98687-2710
TEL: 360-449-5600 • FAX: 360-449-5693 • WWW.INTERDENT.COM

August 26, 2004

BY CERTIFIED MAIL

Dr. Gregory Romriell
President
Pocatello Dental Group
4155 Yellowstone Highway
Pocatello, ID 83202

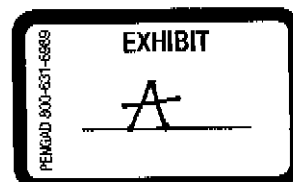
**Re: NOTICE OF DEFAULT—Dental Group Management Agreement Dated
October 11, 1996**

Dear Dr. Romriell:

Pursuant to Article 6.2(b)(1) and (2) of the Dental Group Management Agreement dated October 11, 1996 ("Agreement"), InterDent Service Corporation ("ISC") hereby provides Pocatello Dental Group ("PDG") notice that PDG is in material breach of the Agreement in a number of respects and has refused to comply with a decisions of the Joint Operations Committee ("JOC"). ISC has given PDG thirty (30) days to cure such defaults.

On July 6, 2004, the JOC voted to require PDG to enforce noncompete agreements with a number of departing dentists. PDG nonetheless has failed and refused to do so. ISC did not terminate the Agreement at that time because of the pendency of Temporary Restraining Order ("TRO") proceedings. Those proceedings concluded with the issuance of a Preliminary Injunction against current or former PDG shareholder Leroy ("Larry") Misner for breach of his Noncompete Agreement. The Court held that the relevant Noncompete Agreements are enforceable on their face. We had hoped that the TRO proceedings and the Court's order would persuade PDG to comply with its legal obligations and the JOC decision. However, we have been disappointed to discover that PDG's default is continuing notwithstanding the Court's order. Consequently pursuant to Article 6.2(b)(2) of the Agreement, PDG has 30 days to cure such default by complying with the JOC's directives. PDG's failure to do so will give ISC the option to terminate the Agreement and recover damages, including its lost profits for the remaining 32 years of the Agreement and other incidental and consequential damages.

Independent of its refusal to comply with the JOC's directives, PDG is in material breach of the Agreement. Pursuant to Article 6.2(b)(1) of the Agreement, PDG's failure to cure the following defaults within 30 days will give ISC the right to terminate the Agreement and recover its lost profits for the remaining 32 years of the Agreement and other incidental and consequential damages.



The material breaches PDG must cure within the next 30 days are the following:

1. PDG's failure to enforce noncompete agreements with Drs. Dwight Romriell, Larry Misner (geographical restrictions), Larry Bybee and Corey Snow.
2. PDG's failure to take steps to ensure that Drs. Gregory Romriell and Errol Ormond will comply with their noncompete agreements.
3. PDG's failure to operate the practice in conformity with the annual budget and in a cost-effective and economically rational manner.
4. PDG's interference in ISC's right to hire, terminate and manage its staff pursuant to Articles 3.8(b) and 4.4(b) of the Agreement.
5. PDG's use of goods and services provided by ISC under the Agreement for purposes other than the provision of and management of dental services as contemplated by the Management Agreement and the purposes incidental thereto, in violation of Article 5.6 of the Agreement.
6. PDG's failure to account for, recover and turn over to ISC revenues received by Drs. Dwight Romriell, Larry Misner, Larry Bybee owed to ISC.

Please note that pursuant to Article 10.3 of the Agreement, ISC's failure to assert herein PDG's other breaches of the Agreement does not constitute a waiver of such breaches. Neither is anything herein intended to be a waiver of the additional tort and bad faith claims asserted by ISC against PDG in ongoing litigation. Please also note that should PDG be determined to be inadequately capitalized or have failed to follow the requisite corporate formalities, any judgment against PDG will be enforceable against its shareholders at the relevant times.

If you intend to cure such defaults, please provide written documentation of the cures within the 30-day period. If you do not intend to cure such defaults, please inform me in writing so that ISC can take appropriate action.

Please also let me know if you have any questions.

Sincerely,



Kevin Webb
Regional Vice-President of Operations

cc: Mr. Lowell N. Hawkes
Mr. Ron Kerl

POCATELLO DENTAL GROUP

4155 Yellowstone Ave.
Pocatello, ID 83202

September 8, 2002

InterDent Service Corporation
Attn: Kevin Webb
P.O. Box 872710
Vancouver, WA 98687-2710

Re: Your letter of August 26, 2004 - Notice of Default

Dear Mr. Webb:

Reference is made to your letter of August 26, 2004.

Explain to me how the Joint Operations Committee could have met on July 6 and voted to require Pocatello Dental Group to enforce its agreements with any of its departed dentists? As far as I know, no representative of Pocatello Dental Group participated in the July 6, 2004 meeting, and pursuant to Article 3.5(c)(5) a quorum for conducting business by the JOC requires at least one group and one ISC member. Since there was no Group member participating in the July 6, 2004 JOC meeting, the JOC could not conduct any business, make any binding decisions or "require" the Group to do anything. Since the JOC has not acted within the scope of its authority, its actions are void and not binding upon the Group. Action by ISC, in regard to the items 1. and 2. of your Notice, would be pre-mature.

Regarding Item 3., please provide me with the factual basis for your claim. Your claim is so ambiguous as to make it impossible for the Group to cure such a default (if one exists), or even commence a course of action to cure such a default (if one exists). For example, how has the Group failed "to operate the practice in conformity with the annual budget and in a cost-effective and economically rational manner?" PDG has not been provided with an annual budget for the fiscal year 2004. If one was prepared by the JOC pursuant to Article 3.7(a), it was prepared without the participation of the Group, without a quorum of JOC members, and is not binding upon the Group. Further, the Group members of the JOC did not timely receive from ISC a Preliminary Budget, as required by Article 3.7(b). Without specifying the specific budget issues involved, the Group is unable to confirm and cure, or dispute the alleged default.

Regarding Item 4., you claim that PDG interfered with ISC's right to hire, terminate and manage its staff. Are you referencing the TRO issued against ISC by an Idaho state judge last Fall? Your notice is not specific with respect to the identity of the staff referenced in your notice. If so, let me refer you to Article 4.4(b) of the Management Agreement. It specifically states that

ISC has no authority to terminate non-provider clinical staff without Group's consent. ISC did not request or obtain the consent of the Group before giving termination notices to Dr. Dwight Romriell's staff last Fall. To the extent it attempted to terminate Dr. Dwight Romriell's staff, ISC did so in breach of the management agreement. If you are referring to other actions by PDG, please specify the staff members involved and the action of the Group to which you object. Without specifying the staff involved or the Group's conduct, the Group is unable to confirm and cure, or dispute the alleged default.

Regarding Item 5., you claim that PDG has used goods and services provided by ISC for purposes other than the provisions of and management of the dental services provided by the Group. You do not specify or identify the goods and services which are the subject of your claim. The Group believes that its use of any goods or services provided by ISC was for the furtherance of the Group's obligations to provide ethical and competent dental care to its patients, consistent with Article 3.2, and 3.4(a)(1) of the Management Agreement, subject to the limitations imposed on ISC as recognized in Article 4.1. Please specify the particular goods and services making up your claim of default. If you do not do so, the Group is unable to confirm and cure, or dispute the alleged default.

Regarding Item 6., you claim that PDG has an obligation to account for, recover, and turn over to ISC revenues received by Drs. Dwight Romriell, Larry Misner, and Larry Bybee. You do not identify the "revenues," how they were generated, or the factual basis on which you claim these dentists have somehow received ISC's revenues. Without more substance to your allegation the Group is unable to confirm and cure, or dispute the alleged default.

Further, neither Dr. Dwight Romriell nor Dr. Larry Bybee are in violation of any applicable non-compete contract, therefore I am unable to understand the nature of your claim of breach. These doctors, as far as the Group knows, received their contracted for compensation from the Group for services rendered during the term of their employment contracts with the Group, and since then have not received any revenues belonging to the Group and managed by ISC. Please explain to me the nature and extent of the "ISC" revenues allegedly received by these doctors.

Regarding Dr. Misner, ISC has an independent non-compete contract with Dr. Misner which entitles it to the relief it is now seeking from the Group. ISC has already taken steps to enforce that contract against Dr. Misner. It is not yet clear that ISC will prevail on the non-compete contract it has with Dr. Misner due to ISC's material breach of the Management Agreement, a situation clearly recognized by Judge Boyle in refusing to grant ISC injunctive relief.

In addition, I understand that ISC has not renewed its lease with the Pine Ridge Mall, which lease is scheduled to expire at the end of this month. As far as I know, ISC has not taken any steps to find a replacement location for PDG to conduct its dental practice following the end of that lease, in further violation of the Management Agreement.

Therefore, before PDG can respond to your 30 day notice of default, ISC must provide the Group with the information requested in this letter. Without such information PDG will treat the notice as an ineffective and ambiguous notice of default which is not in compliance with the Management Agreement.

POCATELLO DENTAL GROUP, P.A.

By 
Greg Romriell, President

pc: Ron Kerl
Scott Kaplan
Richard Hearn
Lowell Hawkes



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September 14, 2004

SCOTT J. KAPLAN
Direct (503) 294-9186
sjkaplan@stoel.com

VIA FACSIMILE

Mr. Ron Kerl
Cooper & Larsen
Second Floor
151 North Third Avenue
Pocatello, ID 83205-4229

Re: *Pocatello Dental Group, P.C. v. InterDent Service Corporation, etc.*, U.S. District
Court (Idaho) Case No. CV-03-450-E-LMB

Dear Ron:

InterDent Service Corporation ("ISC") has asked me to respond to Dr. Greg Romriell's September 8, 2004 letter relating to the potential termination of the Management Agreement between Pocatello Dental Group ("PDG") and ISC as a result of PDG's material defaults.

First, with regard to the July 6, 2004 Joint Operations Committee ("JOC") meeting, proper notice was given for the meeting, and the time was blocked out in the schedules of PDG's JOC representatives. Their failure to attend the meeting was therefore a material breach. PDG's prior material breach excuses the JOC quorum requirement and estops PDG from relying upon it. In any event, PDG had a preexisting obligation to enforce dentist noncompete agreements.

With regard to PDG's pretextual requests for additional information, information regarding PDG's breaches has been repeatedly provided informally and in the litigation PDG commenced both in U.S. Bankruptcy Court and in Idaho. PDG's "information requests" can therefore be viewed only as additional evidence of its bad faith.

We trust this answers your questions.

Very truly yours,

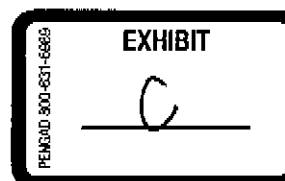

Scott J. Kaplan

SJK:dmv
Enclosure

cc: Mr. Kevin Webb (via e-mail)

Portland3-1493113.1 0021164-00081

Oregon
Washington
California
Utah
Idaho





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TEL: 310-766-2400 • FAX: 310-766-2456 • WWW.INTERDENT.COM

October 1, 2004

BY HAND

Dr. Gregory Romriell
President
Pocatello Dental Group
4155 Yellowstone Highway
Pocatello, ID 83202

**Re: NOTICE OF TERMINATION—Dental Group Management Agreement Dated
October 11, 1996**

Dear Dr. Romriell:

On August 26, 2004, InterDent Service Corporation ("ISC") pursuant to Article 6.2(b)(1) and (2) of the Dental Group Management Agreement dated October 11, 1996 ("Agreement"), gave Pocatello Dental Group ("PDG") notice that PDG is in material breach of the Agreement in a number of respects. PDG had thirty (30) days to cure such defaults.

Because such defaults have not been cured, pursuant to Article 6.2(b)(1) and (2) the Agreement is hereby terminated. Please refer to Article 6.2(c) of the Agreement regarding PDG's rights and responsibilities. In particular, PDG must return to ISC all of ISC's property. Please contact Bruce Call at (360)600-9999 as soon as possible to arrange for your retrieval of patient files. **Your prompt action is necessary to minimize the inconvenience to patients resulting from PDG's breaches of the Agreement.**

Please also contact Mr. Call if you have questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ivar Chhina".

Ivar Chhina
Chief Executive Officer

cc: Mr. Lowell N. Hawkes
Mr. Ron Kerl